

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH.

Civil Revision 2790 of 2006.
Date of Decision: October 30, 2006.

Kailasho Devi & Ors.

....**Petitioners**

through
Mr. J.C.Verma, Sr. Advocate
with Ms. Meenakshi Verma, Advocate

Versus

Parvinder Singh & Ors.

...Respondents
through
Mr. D.P.Gupta, Advocate,
for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This order shall dispose of Civil Revision Nos.2790 and 2757 of 2006 as common questions of law and facts are involved therein. The facts have, however, been extracted from Civil Revision No. 2790 of 2006.

The revision petition is directed against the order dated 7.10.2005 passed by the Motor Accident Claims Tribunal, Ambala whereby it has refused to restore an application which the petitioners had moved for recalling the order dated 3.12.2002 vide which their claim petition was dismissed as withdrawn.

If the allegations are true, one Surender Sharma met with a road accident caused by Tractor No.HR04-A-0671 driven by Balbir Singh and Truck No.HR47-5647. The accident took place on 31.10.2000 in which apart from Surender Sharma, one Dharam Pal also suffered injuries leading to the amputation of his left arm. Surinder Sharma, however, succumbed to

his injuries on 21.11.2000. It is stated that he was about 50 years of age.

The claim petition was filed by the widow of deceased Surender Sharma and their children. On 3.12.2002 a statement was made by learned counsel for the claimants that they “do not want to pursue the claim petition”. A separate statement was also made by the learned counsel to this effect. In this view of the matter, their claim petition was dismissed as withdrawn.

Alleging that the petitioners never authorised their counsel to withdraw the claim petition, the petitioners moved an application dated 2.3.2004. It appears that the said application too was unfortunately dismissed in default on 20.3.2004, which led the petitioners to move another application for restoration of their afore-stated application. The restoration application, however, has been dismissed by the learned Tribunal vide its impugned order dated 7.10.2005.

It is contended on behalf of the petitioners that they are victims of fraud inasmuch as they never authorized the counsel to withdraw the claim petition nor was there any reason to withdraw it, particularly when the sole bread-earner of the family had died in the road accident and not a single penny of compensation was received by them. Learned Tribunal has, however, dismissed the application for restoration of the application, which, in turn was moved by the petitioners for recalling the order dated 3.12.2002, primarily on the ground that the same is not maintainable, as the claim petition was dismissed as withdrawn.

After hearing learned counsel for the parties, I am of the considered view that the impugned order dated 7.10.2005 is unsustainable to the extent it holds that the restoration application was not maintainable due to the fact that the claim petition was dismissed as withdrawn. It has to be kept in view that the application for recalling the order dated 3.12.2002 is founded upon certain allegations of fraud attributed to the counsel, who, according to the petitioners, was never authorised to withdraw the claim petition. If, on the basis of convincing evidence to be led by them, it is proved that the claim petition was withdrawn unauthorisedly and/or the claimants are victims of a fraud played by none else than their own counsel, it is difficult to presume that the Tribunal shall still be helpless or a silent spectator to the miseries of the claimants.

The only issue, thus, to be examined by the Tribunal was as to whether or not the petitioners have been able to show sufficient grounds for setting aside the order dated 20.3.2004 vide which their application for recalling the order dated 3.12.2002, was dismissed in default.

Consequently, and for the reasons afore-stated, the impugned order dated 7.10.2005 is set aside and the application dated 4.3.2004 moved by the petitioners for recalling of the order dated 3.12.2002 is restored. Learned Tribunal shall make an endeavour to decide the aforesaid application as early as possible and not later than three months from the date the parties appear before it.

The parties are directed to appear before the learned Tribunal on 15.11.2006. It is further directed that before deciding the aforesaid restoration application, the Tribunal shall issue notice to the un-represented respondents also.

Disposed of.

October 30, 2006.

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(SURYA KANT)

JUDGE